

AMENDED IN ASSEMBLY JULY 2, 1999

AMENDED IN SENATE APRIL 15, 1999

SENATE BILL

No. 340

Introduced by Senator Baca

February 9, 1999

An act to amend Sections ~~25658.1~~ 25658, 25658.1, and 25658.4 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 340, as amended, Baca. Alcoholic beverages: minors: license revocations: off-sale licensees: applications and acknowledgment.

The Alcoholic Beverage Control Act prohibits the sale of alcoholic beverages to, or the purchase of alcoholic beverages by, persons under the age of 21 years, and imposes penalties in that regard, but permits minors to be used as decoys in the enforcement of these provisions. Existing law requires that, after the completion of each minor decoy program, the law enforcement agency using the decoy shall notify licensees of the results of the program.

This bill would require that notification to be given within 72 hours. The bill would also require that any violation of these provisions affecting a licensed premises shall be reported to the licensee within 72 hours, as provided.

Under existing law, the Department of Alcoholic Beverage Control may revoke a license for a 3rd violation of provisions

relating to selling alcoholic beverages to minors within any 36-month period.

This bill would provide that no violation of these provisions may be considered unless it has become final.

The Alcoholic Beverage Control Act prohibits a clerk from making a sale of alcoholic beverages unless the clerk executes, under penalty of perjury, on the first day he or she makes that sale, an application and acknowledgment, on a form prepared by the department, that includes at a minimum a summary of certain requirements and prohibitions in the act, as specified.

The bill would permit nonprofit organizations and licensees to obtain *videotapes and other* training materials on the Licensee Education on Alcohol and Drugs (LEAD) program, as specified, ~~and would revise the application and acknowledgment form accordingly.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 25658 of the Business and*
2 *Professions Code is amended to read:*

3 25658. (a) Except as otherwise provided in
4 subdivision (c), every person who sells, furnishes, gives,
5 or causes to be sold, furnished, or given away, any
6 alcoholic beverage to any person under the age of 21 years
7 is guilty of a misdemeanor.

8 (b) Any person under the age of 21 years who
9 purchases any alcoholic beverage, or any person under
10 the age of 21 years who consumes any alcoholic beverage
11 in any on-sale premises, is guilty of a misdemeanor.

12 (c) Any person who violates subdivision (a) by
13 purchasing an alcoholic beverage for a person under the
14 age of 21 years and the person under the age of 21 years
15 thereafter consumes the alcohol and thereby proximately
16 causes great bodily injury or death to himself, herself, or
17 any other person, is guilty of a misdemeanor.

18 (d) Any on-sale licensee who knowingly permits a
19 person under the age of 21 years to consume any alcoholic
20 beverage in the on-sale premises, whether or not the

1 licensee has knowledge that the person is under the age
2 of 21 years, is guilty of a misdemeanor.

3 (e) (1) Except as otherwise provided in paragraph
4 (2) or (3), any person who violates this section shall be
5 punished by a fine of two hundred fifty dollars (\$250), no
6 part of which shall be suspended, or the person shall be
7 required to perform not less than 24 hours or more than
8 32 hours of community service during hours when the
9 person is not employed and is not attending school, or a
10 combination of fine and community service as
11 determined by the court.

12 (2) Any person who violates subdivision (a) by
13 furnishing an alcoholic beverage, or causing an alcoholic
14 beverage to be furnished, to a minor shall be punished by
15 a fine of one thousand dollars (\$1,000), no part of which
16 shall be suspended, and the person shall be required to
17 perform not less than 24 hours of community service
18 during hours when the person is not employed and is not
19 attending school.

20 (3) Any person who violates subdivision (c) shall be
21 punished by imprisonment in a county jail for a minimum
22 term of six months not to exceed one year, by a fine not
23 exceeding one thousand dollars (\$1,000), or by both
24 imprisonment and fine.

25 (f) Persons under the age of 21 years may be used by
26 peace officers in the enforcement of this section to
27 apprehend licensees, or employees or agents of licensees,
28 who sell alcoholic beverages to minors. Notwithstanding
29 subdivision (b), any person under the age of 21 years who
30 purchases or attempts to purchase any alcoholic beverage
31 while under the direction of a peace officer is immune
32 from prosecution for that purchase or attempt to
33 purchase an alcoholic beverage. Guidelines with respect
34 to the use of persons under the age of 21 years as decoys
35 shall be adopted and published by the department in
36 accordance with the rulemaking portion of the
37 Administrative Procedure Act (Chapter 3.5
38 commencing with Section 11340) of Part 1 of Division 3
39 of Title 2 of the Government Code). Law
40 enforcement-initiated minor decoy programs in

1 operation prior to the effective date of regulatory
2 guidelines adopted by the department shall be
3 authorized as long as the minor decoy displays to the
4 seller of alcoholic beverages the appearance of a person
5 under the age of 21 years. This subdivision shall not be
6 construed to prevent the department from taking
7 disciplinary action against a licensee who sells alcoholic
8 beverages to a minor decoy prior to the department's
9 final adoption of regulatory guidelines. After the
10 completion of every minor decoy program performed
11 under this subdivision, the law enforcement agency using
12 the decoy shall notify licensees *within 72 hours* of the
13 results of the program.

14 *(g) Any violation of this section affecting a licensed*
15 *premises shall be reported to the licensee within 72 hours,*
16 *unless the violation was committed by the individual*
17 *named as the licensee and was cited.*

18 SEC. 2. Section 25658.1 of the Business and
19 Professions Code is amended to read:

20 25658.1. (a) Notwithstanding any other provision of
21 this division, no licensee may petition the department for
22 an offer in compromise pursuant to Section 23095 for a
23 second or any subsequent violation of Section 25658 that
24 occurs within 36 months of the initial violation.

25 (b) Notwithstanding Section 24200, the department
26 may revoke a license for a third violation of Section 25658
27 that occurs within any 36-month period. This provision
28 shall not be construed to limit the department's authority
29 and discretion to revoke a license prior to a third violation
30 when the circumstances warrant that penalty.

31 (c) For purposes of this section, no violation may be
32 considered for purposes of determination of the penalty
33 until it has become final.

34 ~~SEC. 2.—~~

35 SEC. 3. Section 25658.4 of the Business and
36 Professions Code is amended to read:

37 25658.4. (a) On and after January 1, 1992, no clerk
38 shall make an off sale of alcoholic beverages unless the
39 clerk executes under penalty of perjury on the first day
40 he or she makes that sale an application and

1 acknowledgment. The application and acknowledgment
2 shall be in a form understandable to the clerk.

3 (1) The department shall specify the form of the
4 application and acknowledgment which shall include at
5 a minimum a summary of this division pertaining to the
6 following:

7 (A) The prohibitions contained in Sections 25658 and
8 25658.5 pertaining to the sale to, and purchase of,
9 alcoholic beverages by persons under 21 years of age.

10 (B) Bona fide evidence of majority as provided in
11 Section 25660.

12 (C) Hours of operation as provided in Article 2
13 (commencing with Section 25630) of Chapter 16.

14 (D) The prohibitions contained in subdivision (a) of
15 Section 25602 and Section 25602.1 pertaining to sales to an
16 intoxicated person.

17 (E) Sections 23393 and 23394 as they pertain to
18 on-premises consumption of alcoholic beverages in an
19 off-sale premises.

20 (F) The requirements and prohibitions contained in
21 Section 25659.5 pertaining to sales of keg beer for
22 consumption off licensed premises.

23 (2) The application and acknowledgment shall also
24 include a statement that the clerk has read and
25 understands the summary, a statement that the clerk has
26 never been convicted of violating this division or, if
27 convicted, an explanation of the circumstances of each
28 conviction, and a statement that the application and
29 acknowledgment is executed under penalty of perjury.

30 (3) The licensee shall keep the executed application
31 and acknowledgment on the premises at all times and
32 available for inspection by the department. A licensee
33 with more than one licensed off-sale premises in the state
34 may comply with this subdivision by maintaining an
35 executed application and acknowledgment at a
36 designated licensed premises, regional office, or
37 headquarters office in the state. An executed application
38 and acknowledgment maintained at the designated
39 locations shall be valid for all licensed off-sale premises
40 owned by the licensee. Any licensee maintaining an

1 application and acknowledgment at a designated site
2 other than the individual licensed off-sale premises shall
3 notify the department in advance and in writing of the
4 site where the application and acknowledgment shall be
5 maintained and available for inspection. A licensee
6 electing to maintain application and acknowledgments at
7 a designated site other than the licensed premises shall
8 maintain at each licensed premises a notice of where the
9 executed application and acknowledgments are located.
10 Any licensee with more than one licensed off-sale
11 premises who elects to maintain the application and
12 acknowledgments at a designated site other than each
13 licensed premises shall provide the department, upon
14 written demand, a copy of any employee's executed
15 application and acknowledgment within 10 business days.
16 A violation of this subdivision by a licensee constitutes
17 grounds for discipline by the department.

18 (b) On and after January 1, 1992, the licensee shall post
19 a notice that contains and describes, in concise terms,
20 prohibited sales of alcoholic beverages, a statement that
21 the off-sale seller will refuse to make a sale if the seller
22 reasonably suspects that the Alcoholic Beverage Control
23 Act may be violated, and a statement that a minor who
24 purchases or attempts to purchase alcoholic beverages is
25 subject to suspension or delay in the issuance of his or her
26 driver's license pursuant to Section 13202.5 of the Vehicle
27 Code. The notice shall be posted at an entrance or at a
28 point of sale in the licensed premises or in any other
29 location that is visible to purchasers of alcoholic
30 beverages and to the off-sale seller.

31 (c) On and after January 1, 1998, a retail licensee shall
32 post a notice that contains and describes, in concise terms,
33 the fines and penalties for any violation of Section 25658,
34 relating to the sale of alcoholic beverages to, or the
35 purchase of alcoholic beverages by, any person under the
36 age of 21 years.

37 (d) Nonprofit organizations may obtain ~~video—tapes~~
38 *videotapes* and other training materials from the
39 department on the Licensee Education on Alcohol and
40 Drugs (LEAD) program and provide ~~video—tapes~~

1 *videotapes* and other training materials to licensees
2 regarding the sale of alcoholic beverages. Licensees may
3 obtain *videotapes and other* training materials from the
4 department, or any other source, on the LEAD program,
5 or any training program ~~certified for “clerk: off-sale” by~~
6 ~~the California Coordinating Counsel on Responsible~~
7 ~~Beverage Service (C3RBS).~~

8 ~~(e) The department’s form entitled “Clerk’s Affidavit~~
9 ~~and Sign” shall contain a box that reads: “I have received~~
10 ~~the LEAD orientation from the department, or~~
11 ~~orientation from a nonprofit organization on the sale of~~
12 ~~alcoholic beverages, or orientation from a training~~
13 ~~program for “Clerk: off-sale” certified by the California~~
14 ~~Coordinating Counsel on Responsible Beverage Service.”~~

15 ~~(f) that provides instruction on the laws specified in~~
16 ~~paragraph (1) of subdivision (a). The videotapes and~~
17 ~~training materials may be updated periodically and may~~
18 ~~be provided in English and other languages, and when~~
19 ~~made available, shall be provided at cost.~~

20 (e) As used in this section:

21 (1) “Off-sale seller” means any person holding a retail
22 off-sale license issued by the department and any person
23 employed by that licensee who in the course of that
24 employment sells alcoholic beverages.

25 (2) “Clerk” means an off-sale seller who is not a
26 licensee.

27 ~~(g)~~

28 (f) The department may adopt rules and appropriate
29 fees for licensees that it determines necessary for the
30 administration of this section.